IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 18674 of 2022

M/s. Sunny Motors .... ***Petitioner***
Mr. Tushar Kanti Satpathy, Advocate
-versus-
Central Board of Indirect Taxes and Customs (CBIC) Department of Revenue, Ministry of Finance & Others .... ***Opposite Parties***

Mr. Radheshyam Chimanka, Senior Standing Counsel for CGST
Mr. Sunil Mishra, ASC for CT & GST Organization

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER

Order No.

25.08.2022

01. **1.** This matter is taken up through virtual/physical mode.

2. Alleging unreasonable action on the part of the Assistant Commissioner, GST & CX, Cuttack-I Division (Opposite Party No.8) who has attempted to overreach the direction contained in the order dated 16th September, 2021 of this Court passed in the case of the present Petitioner, Sri Tushar Kanti Satapathy, Advocate for the Petitioner submitted that though this Court having taken note of judgments/decisions of different High Courts, directed the Opposite Parties to open the portal and permit the Petitioner to file Form GST TRAN-1 electronically or accept the same manually, the said Authority-Opposite Party No.8 has intimated the Petitioner as follows:

" Please refer to your representations dtd.25.10.2021, 18.10.2021 and 01.10.2021 along with the Hon'ble High Court of Orissa Order No.06 dtd.16.09.2021 addressed to

> *the Commissioner, GST & Central Excise, CR Building, Rajswar Vihar, Bhubaneswar on the above cited subject.*
>
> *As directed by the Principal Commissioner, GST & Central Excise, CR Building, Rajswa Vihar, Bhubaneswar with reference to the Hon'ble High Court of Orissa Order No.06 dtd.16.09.2021, the TRAN-1 application manually filed by you is hereby acknowledged by this office for verification of genuineness of the claim. However, processing/accepting of the claim as filed by you is subject to receipt of outcome of the verdict of Apex Court in respect of Department's SLP proposed to be filed against the Order of Hon'ble High Court."*

3. The counsel for the Petitioner has submitted that the attitude of the Department led to much hardship than to resolve the difficulty faced. Consequently even after five years have been elapsed since the Central Goods and Services Tax Act/the Odisha Goods and Services Tax Act, 2017 (in short herein after referred to as "CGST/OGST Act") has been introduced with effect from 01.07.2017, the Petitioner is not allowed to avail the input tax credit that was to be carried forward by virtue of transitional provisions contained in Section 140 read with Rule 117 of the CGST/OGST Rules. Mr. Tushar Kanti Satapathy, counsel for the Petitioner has sought for issue of writ holding the action of the Opposite Parties illegal, arbitrary and unreasonable. Mr. Satapathy referring to order dated 22nd July, 2022 passed by the Hon'ble Supreme Court of India in *SLP (C) No(s). 32709-32710/2018* : *Union of India & Another Vrs. Filco Trade Centre & Another* submitted that the Opposite Parties are bound to allow the claim of the Petitioner as has already been laid before the Authority-opposite party No.8 pursuant to direction of this Court in *W.P.(C) No.9348 of 2020*.

4. Perusal of the writ petition shows that the Petitioner, partnership firm, carrying on its business in sale of two wheelers, parts and accessories thereof attempted to upload Form GST TRAN-1, but due to technical reasons the same turned out to be in vain. The Petitioner on an earlier occasion approached this Court in *W.P. (C) No. 9348 of 2020* wherein this Court directed as follows *vide* order dated 16th September, 2021:

> ***"****Accordingly, in the present case a direction is issued to the Opposite Parties to either open the portal and permit the Petitioner to file TRAN-1 form electronically on or before 1st November, 2021 or accept the TRAN-1 form from the Petitioner manually before that date. It will be open to the authorities to verify the genuineness of the claim of the Petitioner in accordance with law and pass appropriate orders."*

5. It is seen from the letter dated 28th October, 2021 issued by Assistant Commissioner-Opposite Party No.8 that the processing/acceptance of the claim of the Petitioner would be subject to outcome of SLP which was then under contemplation by the Department. The text of said letter is extracted herein below:

> ***"****Please refer to your representations dated 25.10.2021, 18.10.2021 and 01.10.2021 along with the Hon'ble High Court of Orissa Order No.06 dated 16.09.2021 addressed to the Commissioner, GST & Central Excise, CR Building, Rajaswa Vihar, Bhubaneswar on the above cited subject.*
>
> *As directed by the Principal Commissioner, GST & Central Excise, CR Building, Rajaswa Vihar, Bhubaneswar with reference to the Hon'ble High Court of Orissa Order No.06 dated 16.09.2021, the TRAN-1 application manually filed by you is hereby acknowledged by this Office for verification of genuineness of the claim. However,*

processing/accepting of the claim as filed by you is subject to receipt of outcome of the verdict of Apex Court in respect of Department's SLP proposed to be filed against the Order of Hon'ble High Court."

Mr. Satapathy, the learned counsel for the petitioner, therefore, submitted that the contemplated administrative action of the Department could not have detained the *quasi* judicial Authority-opposite party No.8 from discharging his function in obedience to the directions of this Court *vide* Order dated 16.09.2021 passed in *W.P.(C) No.9348 of 2020.* Mr. Satapathy in his fairness has pressed into service order dated 22nd July, 2022 of Hon'ble Supreme Court passed in SLP (C) No. 32709-32710/2018 and submitted that the opposite party No.8 is now bound by what has been stated in his letter.

6. Perusal of copy of order dated 22nd July, 2022 of Hon'ble Supreme Court passed in SLP (C) No. 32709-32710/2018 shows that many matters have been tagged to said case and the case of the Petitioner finds place therein being SLP(C) No.929/2022. The Hon'ble Supreme Court has been pleased to pass the following order:

> *"Permission to file Special Leave Petition(s) is allowed.*
>
> *Delay condoned.*
>
> *Having heard learned Additional Solicitor General, learned counsel appearing for different States and learned counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases:*
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> 1. *Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.

The Special Leave Petitions are disposed of accordingly.

Pending applications, if any, also stand disposed of."

This Court taking note of said Order of the Hon'ble Supreme Court in the case of *Barun Motors Vrs. Union of India & Ors., W.P.(C) No.15095 of 2020, vide Order dated 03.08.2022* observed as follows:

"xxx xxx xxx xxx

3. At the time of hearing, learned counsel for the Parties are agreed that the present Writ Petitioner has become infructuous in view of the Opposite Parties agreeing to open the common portal for facilitating the filing of TRAN-1 form by the Petitioner, as prayed for in the present Writ Petition, between the period with effect from 1st September, 2022 to 31st October, 2022 in compliance of the general directions passed by the

Hon'ble Supreme Court on 22nd July, 2022 in SLP(C) Nos.32709-32710 of 2018 and connected matters."

7. In view of the above circumstances, it is desired that the Assistant Commissioner, GST & CX, Cuttack-I Division-Opposite Party No.8 shall adhere to what has been assured in his letter bearing C.No. IV(16)01/TRAN-1/TECH/CTC-I/2018(Pt-I)/2661, dated 28.10.2021. It is directed that the said Authority shall comply with the directions contained in the above orders of the Hon'ble Supreme Court as well as this Court.

8. With the aforesaid observation, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

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(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant *August 25*, 2022
Cuttack